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**U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:12-cv-01746-SRB
Internal Use Only**

CrossFit Incorporated v. White et al
Assigned to: Judge Susan R Bolton
Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 08/15/2012
Jury Demand: Plaintiff
Nature of Suit: 840 Property Rights:
Trademark
Jurisdiction: Federal Question

Plaintiff

CrossFit Incorporated
a Delaware corporation
Trademark
3,007,458

represented by **Matthew Gregory Kleiner**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Scott White
an individual





Defendant

**Personal Power Training by Scott
White LLC**
an Arizona LLC

Defendant

Unknown Parties
named as: Does 1-25

Date Filed	#	Docket Text

08/15/2012	 <u>1</u>	COMPLAINT. Filing fee received: \$350.00, receipt number PHX 0970-7124987, filed by CrossFit Incorporated (submitted by Matthew Kleiner). (Attachments: # <u>1</u> Civil Cover Sheet)(REK) (Entered: 08/15/2012)
08/15/2012	 <u>2</u>	NOTICE/ Certifice of Interested Parties by CrossFit Incorporated (submitted by Matthew Kleiner). (REK) (Entered: 08/15/2012)
08/15/2012	 <u>3</u>	Filing fee paid, receipt number PHX 0970-7124987. This case has been assigned to the Honorable Susan R. Bolton. All future pleadings or documents should bear the correct case number: CV 12-01746-PHX-SRB. Notice of Availability of Magistrate Judge to Exercise Jurisdiction form attached. (REK) (Entered: 08/15/2012)
08/15/2012	 <u>4</u>	NOTICE TO PARTY RE CORPORATE DISCLOSURE STATEMENT: Pursuant to FRCiv 7.1 and LRCiv 7.1.1 the attached Corporate Disclosure Statement form must be filed by all nongovernmental corporate parties with their first appearance. A supplemental statement must be filed upon any change in the information. In addition, if not already filed, the Corporate Disclosure Statement should be filed within 14 days. Corporate Disclosure Statement Deadline set as to CrossFit Incorporated. (REK) (Entered: 08/15/2012)

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6

7 UNITED STATES DISTRICT COURT

8 DISTRICT OF ARIZONA
9 CASE NO.

10 CROSSFIT, INC., a Delaware
corporation,

11 Plaintiff,

12 v.

13 SCOTT WHITE, an individual;
PERSONAL POWER TRAINING BY
14 SCOTT WHITE LLC, an Arizona LLC;
and DOES 1-25

15 Defendants.
16

COMPLAINT FOR:

1. False Designation of Origin
[15 U.S.C § 1125(a)];
2. Trademark Infringement
[15 U.S.C § 1114];
3. Trademark Dilution
[15 U.S.C § 1125(c)];
4. Cyberpiracy
[15 U.S.C. § 1125(d)];

JURY TRIAL DEMAND
[FRCP 38]

Gordon & Rees LLP
101 W. Broadway
Suite 2000
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1 Plaintiff CrossFit, Inc. ("CrossFit"), for its Complaint against Scott White,
2 Personal Power Training by Scott White, LLC, and Does 1-25 (collectively
3 "Defendants") alleges as follows:

4 **Nature of the Action**

5 1. This is an action for willful violations of CrossFit's intellectual
6 property rights, including trademark infringement, trademark dilution, false
7 designation of origin, and cyberpiracy arising out of Defendants' unauthorized use
8 of CrossFit's registered service marks and trademarks.

9 **Jurisdiction and Venue**

10 2. This action arises under the trademark laws of the United States, 15
11 U.S.C. § 1051 *et seq.*

12 3. This Court has subject matter jurisdiction over CrossFit's claims as
13 federal questions pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §§ 1338(a) and (b).

14 4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400.

15 **The Parties**

16 5. Plaintiff CrossFit, Inc., is a Delaware Corporation principally engaged
17 in the business of fitness training and consultancy. CrossFit is the owner of
18 protectable interests in several registered United States trademarks and service
19 marks comprised of the term "CrossFit."

20 6. Defendant Scott White is an individual offering fitness training
21 services in Scottsdale, Arizona. Mr. White is currently doing business as a
22 personal fitness trainer under the names "CrossFit Workout Scottsdale" and
23 "Personal Power Training." On information and belief, Defendant Scott White is
24 an Arizona resident residing in the Scottsdale metropolitan area.

25 7. Defendant Personal Power Training by Scott White, LLC ("PPT") is
26 an Arizona LLC. On information and belief, PPT's principal place of business is in
27 Scottsdale, Arizona. PPT currently offers personal fitness training under the names
28 "CrossFit Workout Scottsdale" and "Personal Power Training."

1 8. PPT is the alter ego of Scott White because there is a unity of
2 ownership and interest between Scott White and PPT such that no separation
3 between the two defendants actually exists. On information and belief, Scott White
4 is the sole owner of PPT, treats the assets of PPT as his own, and authorized and/or
5 ratified all of the acts of PPT alleged herein for his own personal benefit. Because
6 Scott White has utilized PPT's assets for personal gain and has diverted funds
7 generated by PPT's assets to his own personal use, treating Scott White and PPT as
8 separate entities would be unjust.

9 9. CrossFit is ignorant of the true names and capacities of defendants
10 DOES 1 through 25, inclusive, and therefore sues these defendants by such
11 fictitious names. CrossFit will amend this complaint and allege their true names
12 and capacities when ascertained. CrossFit is informed and believes, and thereon
13 alleges, that each of the defendants designated as "DOE" is responsible, in some
14 manner, for the injuries and damages to plaintiff as alleged herein, and that
15 plaintiff's damages were proximately caused by said defendants.

16 10. Plaintiff is informed and believes and thereon alleges that at all
17 relevant times, each of the defendants, including each "DOE" defendant, was the
18 agent, servant, employee, joint-venturer, and/or partner of each of the other
19 defendants, and in doing the things herein alleged, each defendant was acting
20 within the course and scope of such agency and/or employment.

21 **CrossFit's Intellectual Property Rights**

22 11. Through its design, development, sales, and marketing activities,
23 CrossFit has developed a revolutionary fitness training regimen that has become
24 the principal strength and conditioning program for many police academies and
25 tactical operations teams, military special operations units, champion martial
26 artists, and hundreds of professional and amateur athletes worldwide. CrossFit
27 licenses use of its intellectual property, including the "CrossFit" name, to affiliates
28 that have received particularized training and accreditation from CrossFit. The

1 CrossFit name is of particular value in the competitive “small-box” fitness training
2 industry. CrossFit’s careful cultivation, maintenance, and protection of its
3 intellectual property rights has enabled CrossFit to amass considerable goodwill
4 within its industry, and the CrossFit name is widely recognized around the world.
5 Consumers readily and singularly associate the CrossFit name with CrossFit’s
6 business and services.

7 12. CrossFit diligently protects its intellectual property through, *inter alia*,
8 trademark and service mark registration. CrossFit owns several registered United
9 States trademarks and service marks comprised of the word mark “CrossFit,”
10 including registered U.S. Service Mark Registration No. 3,007,458 issued on
11 October 18, 2005, for use in connection with fitness training services. CrossFit’s
12 marks have been in continuous use in commerce since at least the dates of their
13 registration to the present day.

14 13. CrossFit provides a nationally standardized accreditation program to
15 personal trainers who desire to become licensed CrossFit affiliates. Persons who
16 successfully complete CrossFit’s accreditation program and meet other
17 requirements for affiliation are eligible to enter into annually renewable affiliate
18 license agreements which permit limited use of the CrossFit mark subject to various
19 conditions. Only persons who have completed CrossFit’s accreditation process and
20 entered into valid affiliate license agreements are permitted to use CrossFit’s mark.

21 **Defendants’ Willful Infringement**

22 14. On or about August 3, 2010, Scott White registered the domain name
23 “crossfitworkoutscottsdale.com.” On information and belief, since the date of
24 registration, Scott White has used this domain name in commerce for the purpose
25 of marketing his fitness training services. Defendants are not accredited CrossFit
26 trainers, have no license to use the CrossFit mark, and have ignored several
27 amicable requests to cease and desist unauthorized use of CrossFit’s mark.

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15. The content found on Defendants' website is specifically designed to mislead consumers into believing that Defendants are licensed CrossFit affiliates. For example, the majority of the content on "crossfitworkoutscottsdale.com" is copied directly from CrossFit's own website. In fact, it appears that Defendants are using a software program to automatically update their infringing website with new content from CrossFit's website on a daily basis. Additionally, large text across the top of the Defendants website reads "CrossFit Scottsdale" and "CrossFit Workout Scottsdale." The phone number and address for "CrossFit Scottsdale" provided on Defendants' infringing website are identical to the phone number and address for PPT.

16. In light of the fact that Defendants knowingly registered a domain name comprised in substantial part of CrossFit's registered mark, advertise their fitness training services by holding themselves out as "CrossFit Scottsdale," and post content from CrossFit's website as their own on a daily basis, there is an extremely high probability of consumer confusion. The extreme likelihood of consumer confusion is bolstered by the fact that there is an accredited, licensed affiliate in the vicinity of Defendants' location permissibly doing business as "CrossFit Scottsdale."

FIRST CLAIM
False Designation of Origin (15 U.S.C. § 1125(a))
(Against All Defendants)

17. CrossFit repeats and realleges the allegations set forth above.

18. Defendants' use of CrossFit's mark in interstate commerce, without CrossFit's consent, is a false designation of origin causing a likelihood of confusion, mistake, and deception as to source, sponsorship, affiliation, and/or connection in the minds of the public. Defendants' conduct has infringed CrossFit's trademark rights in violation of Section 43(a) of the Lanham Act, 15 U.S.C. 1125(a)(1).

19. By reason of the foregoing, CrossFit has been injured in an amount not yet fully determined. Further, Defendants have been unjustly enriched by virtue of their deception of consumers and misappropriation of CrossFit's goodwill.

20. In addition, as a result of Defendants' acts of infringement, CrossFit has suffered and will continue to suffer irreparable harm for which CrossFit has no adequate remedy at law, including damage to CrossFit's goodwill. Unless Defendants' acts of infringement are enjoined by this Court, CrossFit will continue to suffer irreparable harm.

21. Defendants' actions have been knowing, intentional, wanton, and willful. The principles of equity warrant an award to CrossFit of treble damages and profits, attorney's fees, and the costs of this action pursuant to 15 U.S.C. § 1117.

SECOND CLAIM
Trademark Infringement (15 U.S.C. § 1114)
(Against All Defendants)

22. CrossFit repeats and realleges the allegations set forth above.

23. This claim is for trademark infringement under the laws of the United States, Section 32 of the Lanham Act, 15 U.S.C. § 1114(1)(a).

24. Defendants have used CrossFit's name to advertise and sell Defendants' fitness training services and goods in violation of CrossFit's rights in its registered trademarks and service marks.

25. Defendants' use of CrossFit's mark is likely to cause confusion, mistake, and to deceive consumers.

26. Defendants' actions constitute a blatant attempt to confuse the consuming public and to trade off CrossFit's goodwill.

27. Defendants have acted knowingly and willfully, with full knowledge of the likelihood of confusion and with the intent to deceive consumers in order to trade off the efforts and earned goodwill and reputation of CrossFit.

1 28. By reason of the foregoing acts of trademark infringement, CrossFit
2 has been injured in an amount not yet ascertained. Further, Defendants have been
3 unjustly enriched by virtue of their deception of consumers and misappropriation
4 of CrossFit's goodwill.

5 29. In addition, as a result of Defendants' acts of infringement, CrossFit
6 has suffered and will continue to suffer irreparable harm for which CrossFit has no
7 adequate remedy at law, including damage to CrossFit's goodwill. Unless
8 Defendants' acts of infringement are enjoined by this Court, CrossFit will continue
9 to suffer a irreparable harm.

10 30. Defendants' actions have been knowing, intentional, wanton, and
11 willful. The principles of equity warrant an award to CrossFit of treble damages
12 and profits, attorneys' fees, and the costs of this action pursuant to 15 U.S.C. §
13 1117.

14 **THIRD CLAIM**
15 **Trademark Dilution (15 U.S.C. § 1125(c))**
 (Against All Defendants)

16 31. CrossFit repeats and realleges the allegations set forth above.

17 32. This claim is for trademark dilution under the laws of the United
18 States, Section 43 of The Lanham Act, 15 U.S.C. § 1125(c).

19 33. Because of the substantive investment CrossFit has made in marketing
20 its business, throughout years of continuous use in commerce, including
21 advertising and extensive marketing, CrossFit's service marks and trademarks have
22 become instantly recognizable and distinctive in the fitness industry, have gained
23 secondary meaning, and have become both distinctive and famous. Thus,
24 CrossFit's marks qualify as "famous marks" under the Federal Trademark Dilution
25 Act ("FTDA"), 15 U.S.C. § 1125(c).

26 34. Defendants' unauthorized use of the CrossFit name dilutes the
27 capacity of CrossFit's marks to identify and distinguish CrossFit's services.

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1 35. By reason of the foregoing acts of trademark dilution, CrossFit has
2 been injured in an amount not yet ascertained. Further, Defendants have been
3 unjustly enriched by virtue of their dilution of CrossFit's marks.

4 36. In addition, as a result of Defendants' acts of infringement, CrossFit
5 has suffered and will continue to suffer irreparable harm for which CrossFit has no
6 adequate remedy at law, including damage to CrossFit's goodwill. Unless
7 Defendants' acts of infringement are enjoined by this Court, CrossFit will continue
8 to suffer a irreparable harm.

9 37. Defendants' actions have been knowing, intentional, wanton, and
10 willful. The principles of equity warrant an award to CrossFit of treble damages
11 and profits, attorney's fees, and the costs of this action pursuant to 15 U.S.C. §
12 1117.

13 **FOURTH CLAIM**
14 **Cyberpiracy (15 U.S.C. § 1125(d))**
 (Against All Defendants)

15 38. CrossFit repeats and realleges the allegations set forth above.

16 39. This claim is brought under the Cyberpiracy Protection Act, Section
17 43(a) of the Lanham Act, 15 U.S.C. § 1125(d).

18 40. Defendant Scott White is the registrant of the domain name
19 "www.crossfitworkoutscottsdale.com;" this domain name is confusingly similar to
20 and dilutive of CrossFit's registered trademarks and service marks.

21 41. Defendants are presently using the domain name
22 "www.crossfitworkoutscottsdale.com" in bad faith with the intent to profit from
23 unauthorized use of CrossFit's mark. Defendants' bad faith is established, *inter*
24 *alia*, because despite the fact that CrossFit has specifically informed Defendants
25 that their domain name is likely to create consumer confusion and constitutes
26 unauthorized use of the CrossFit name, Defendants continue to use the domain
27 name with the intent of diverting consumers from CrossFit's website and from the
28 websites of licensed CrossFit affiliates in an attempt to profit off consumer

1 deception and misappropriation of CrossFit's goodwill.

2 42. In addition to the remedies sought above, CrossFit is entitled to a
3 separate award of statutory damages and an order forfeiting, cancelling, or
4 transferring the domain name "www.crossfitworkoutscottsdale.com" to CrossFit
5 pursuant to 15 U.S.C. § 1125 (d)(1)(C).

6 **WHEREFORE**, CrossFit prays the Court grant relief as follows:

7 1. Judgment in CrossFit's favor on all claims herein;

8 2. A preliminary injunction preventing Defendants and those additional
9 parties specified in Federal Rule of Civil Procedure 65(d) from continued
10 infringement of CrossFit's intellectual property rights, including infringement of
11 CrossFit's registered trademarks and service marks;

12 3. A permanent injunction preventing Defendants and those additional
13 parties specified in Federal Rule of Civil Procedure 65(d) from continued
14 infringement of CrossFit's intellectual property rights, including infringement of
15 CrossFit's registered trademarks and service marks;

16 4. An accounting of profits and damages resulting from Defendants'
17 false designation of origin, trademark infringement, trademark dilution, and unfair
18 competition, and trebling of such damages under the trademark laws because of the
19 knowing, intentional, willful, and wanton nature of Defendants' conduct;

20 5. An award to CrossFit of (a) an amount equal to the actual damages
21 suffered by CrossFit as a result of the infringement of its proprietary trade dress;
22 (b) an amount equal to the profits earned by Defendant as a result of its
23 infringement; (c) an amount equal to three times the monetary award assessed in
24 view of Defendants' willful and wanton infringement; (d) in the alternative as may
25 be elected by CrossFit, pursuant to Lanham Act Section 35, 15 U.S.C. § 1117(c),
26 statutory damages for each of Defendants' willful acts of infringement; (e) pre-
27 judgment interest and post-judgment interest; (f) an amount equal to CrossFit's
28 reasonable attorneys' fees, as an "exceptional" case under 15 U.S.C. § 1117;

REQUEST FOR JURY TRIAL

Pursuant to Rule 38, Federal Rules of Civil Procedure, CrossFit hereby demands a jury trial on all issues triable as of right to a jury.

DATED: August 15, 2012

Respectfully submitted,
GORDON & REES LLP

By: /s/ Matthew G. Kleiner
Matthew G. Kleiner
Attorneys for Plaintiff
CrossFit, Inc.